Supreme Court, U.S.
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No. 05-66

In The

Supreme Court of the United States

SHAWN BROUSSARD,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

On Petition For A Writ Of Certiorari To The Second Parish Court, Parish Of Jefferson, State Of Louisiana

PETITION FOR A WRIT OF CERTIORARI

D. DOUGLAS HOWARD, JR.
Counsel of Record
SHAWN C. REED
DANYELLE M. TAYLOR
HOWARD REED & TAYLOR
839 St. Charles Avenue
Suite 306
New Orleans, LA 70130
(504) 581-3610

Counsel for Petitioner

COCKLE LAW BRIEF PRINTING CO (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Is an ordinance making it unlawful "for any person to obstruct or interfere with any law enforcement officer in the performance or discharge of his duties" to which there has been no limiting construction vague and overbroad in violation of the First and Fourteenth Amendments and has that ordinance been constitutionally applied to the Petitioner in the proceedings below?

LIST OF PARTIES TO THE PROCEEDING

All parties to this proceeding are contained in the caption of this matter.

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OPINIONS AND ORDERS BELOW

The Louisiana Fifth Circuit Court of Appeals orders refusing to grant supervisory writs are unreported. App. 10, 11. The decisions of the Louisiana Supreme Court refusing to grant writs of review, certiorari and mandamus are also unreported. App. 12, 13. The judgment of the Jefferson Parish Criminal District Court is unreported. Pertinent provisions of that transcript are attached. App. 1-9.

STATEMENT OF JURISDICTION

The judgment of the trial court was entered on November 13, 2003. The Fifth Circuit Court of Appeals For The State of Louisiana denied a timely petition for writs of review on February 18, 2004 and is unreported. App. 10, 11. The Louisiana Supreme Court denied a timely appeal on February 18, 2005. App. 12. The Louisiana Supreme Court subsequently denied a timely application for rehearing or reconsideration of her application for writs of review, certiorari and mandamus on April 8, 2005. App. 13. This Court's jurisdiction rests on 28 U.S.C. § 1257(a).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

Local Ordinances

Code of Ordinances, Jefferson Parish Louisiana § 20-23 ("Definitions") is lengthy and is reproduced on page 15 of the Appendix.

Code of Ordinances, Jefferson Parish Louisiana § 20-24 ("Interfering with law enforcement officers") provides:

"(a) It shall be unlawful for any person to obstruct or interfere with any law enforcement officer in the performance or discharge of his duties. (b) 'Obstruct,' for the purposes of this section, shall also include any acts or actions which an 'obstruction of' an officer's duties as defined in R.S. 14:108." This ordinance is also reproduced on page 16 of the Appendix.

State Statutes

Louisiana Revised Statute 14:108 is lengthy and is reproduced on page 14 of the Appendix.

Constitutional Provisions

The First Amendment to the United States Constitution provides, in pertinent part: "Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people to peaceably assemble, and to petition the Government for a redress of grievances." U.S. Const. amend. I.

The Fourteenth Amendment to the United States Constitution provides, in relevant part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

STATEMENT OF THE CASE

A. The Incident Forming the Basis of This Application

The Petitioner in this matter is Captain[1] Shawn Broussard, U. S. Army.[2,3] The events which form the basis of this matter occurred on the evening of November 2, 2002, at Dillard's Department Store in Oakwood Mall in Gretna, Louisiana. The entire incident, which lasted less than two minutes, was captured on surveillance video.[4] Petitioner implores this Court to review that video in consideration of this application as it depicts how the application of Jefferson Parish ordinance § 20-24 (J.P. 20-24) can persecute an otherwise lawful citizen for exercising his right to free speech and assembly in violation of the First and Fourteenth Amendments.

On the evening of November 2, 2002, Capt. Broussard was shopping at Dillard's Department Store (herein referred to as "Dillard's") on the evening of November 2, 2002, when she observed a conversation between a store

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[1] At the time of her arrest, Shawn Broussard held the rank of First Lieutenant, she was subsequently promoted during the course of this litigation.

[2] Capt. Broussard has had a very distinguished career, earning three Army Achievement Medals, two Meritorious Service Medals, three Good Conduct Medals, two Army Commendation Medals and the Joint Service Achievement Medal. Capt. Broussard's assignments have included positions at the Pentagon, the White House and Operation Desert Storm. Capt. Broussard maintains a high level of security clearance. However, despite her distinguished service record, Counsel for the State objected to acknowledging Capt. Broussard's achievements and refused to address her as "Lieutenant Broussard" during her trial.

[3] Capt. Broussard is scheduled to deploy to Iraq on July 21, 2005.

[4] Petitioner has numerous copies of the surveillance video and will promptly produce them should this Court wish to view them.

clerk and a shopper. Capt. Broussard heard the clerk ask the shopper, a man, if he needed assistance, and he answered that he did not. Jefferson Parish Sheriff's deputies Jason Picou and Chester Kowalski were working a paid detail for Dillard's. Deputy Picou, followed by Deputy Kowalski approached the man and asked him if he had been rude to the sales clerk. Capt. Broussard attempted to tell the deputies what she had heard of the conversation. Deputy Kowalski asked the man if he knew Capt. Broussard, to which he answered "no." Capt. Broussard, hearing this exchange, told the deputies that she did not know the man. Deputy Kowalski then told Capt. Broussard she had to show him her identification. When she questioned Deputy Kowalski about why she had to produce identification, she was told to do so or leave the store. When she questioned Deputy Kowalski a second time, without answering her inquiry, Deputy Kowalski handcuffed and arrested Capt. Broussard. Capt. Broussard's testimony is corroborated by an independent witness, who was not acquainted with Capt. Broussard prior to the incident. The testimony of the independent witness was largeley ignored by the trial court. This witness, Ms. Thomas, testified that Capt. Broussard was only speaking to the officers, not to the "suspected shoplifter," and that Capt. Broussard was not behaving in a loud or boisterous manner. Contrarily, the deputies testified that Capt. Broussard was speaking to the "suspected shoplifter" and talking in a loud tone.

The entire exchange, from the time she first spoke to the deputies, until the time she was handcuffed by Deputy Kowalski, took place in a mere minute and thirty-nine seconds. Her entire interaction with Deputy Kowalski took only forty-one seconds, from the time she first spoke to

him until he placed her under arrest. The exchange in which Deputy Kowalski claims he told her to leave three times, took only fifteen seconds. Only two seconds elapsed between Deputy Kowalski's last statement to Capt. Broussard and his reaching for the handcuffs. The surveillance video shows that Capt. Broussard did not resist the deputies in any way or do anything other than speak to them prior to her arrest.

Capt. Broussard was then taken, not to the police station located on the Mall property, but to a back room at Dillard's. There Deputy Kowalski, who is physically much larger than Capt. Broussard, used racial slurs, cursed her, threw her up against a wall, and held her there with his forearm pressed against her throat, choking her. Despite her verbalizing that he was choking her and hurting her, the deputy would not let go, and Capt. Broussard struck out by the only means which she could use, her feet, as her hands were cuffed behind her back. She struck the deputy twice in succession, first with her knee, and then with a kick, forcing him to let go of her throat. In the middle of this altercation, Brian Jacobs, a Dillard's employee, entered the room and after the deputy had let go of Capt. Broussard, he pushed her back against the wall. Brian Jacobs and Deputy Kowalski held Capt. Broussard against the wall, and Deputy Kowalski threatened her with Mace. A third deputy arrived and took Capt. Broussard to the police station.

The deputies testified that Capt. Broussard hindered their "investigation" by speaking to the shopper, who they subsequently identified as a "suspected shoplifter." The deputies further claimed that they were unable to complete their investigation due to Capt. Broussard's "interference," however, the video clearly shows the "suspected

shoplifter" being further interrogated by the remaining deputy. The "suspected shoplifter" was never arrested or even detained for shoplifting or any other reason; only Capt. Broussard was detained and arrested. The deputies claim that a dangerous situation had developed, as a crowd was gathering in the store as a result of their interactions with Capt. Broussard. That was not true. An independent witness testified at Capt. Broussard's trial that shoppers were merely turning and looking, and that no crowd gathered. More importantly, the video surveillance tape fails to corroborate this claim, as no crowd is seen anywhere near Capt. Broussard or the deputies.

B. Petitioners Arrests, Convictions, and Requests for Review

Based on the incidents set forth above, Capt. Shawn Broussard was charged with violations of Louisiana Revised Statute 14:108, Resisting an Officer, Louisiana Revised Statute 14:34.2, Battery of a Police Officer, and Jefferson Parish Ordinance § 20-24, Interfering With Law Enforcement Officers. On November 13, 2003, Petitioner was tried before a judge, not a jury,[5] where she pled not guilty to all of the charges brought against her. Petitioner was acquitted of the charges under La. R.S. 14:108, Resisting an Officer,[6] as the trial court found that the

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[5] According to Louisiana Code of Criminal Procedure Article 779, a defendant charged with a misdemeanor does not receive a trial by jury unless the sentence for his alleged acts may be a fine in excess of one thousand dollars or imprisonment for more than six months.

[6] "It is a long-established principle in Louisiana law that a citizen has the right to resist an unlawful arrest." *White v. Morris*, 345 So.2d 461 (La. 1977).

video did not substantiate the assertion that Capt. Broussard resisted being arrested, but rather that she was cooperative with the arrest. Despite their damaged credibility, relying solely on the deputies' unsubstantiated testimony, and contrary to independant eye witness testimony as to the other charges, the trial court found Capt. Broussard guilty of violating both J.P. 20-24, Interfering With Law Enforcement Officers and La. R.S. 14:34.2, Battery of a Police Officer. It is from this judgment that applicant seeks review.[7,8]

Capt. Broussard's timely application for supervisory writs to the Louisiana Fifth Circuit Court of Appeal was denied on the basis that the transcript of the trial court proceedings were omitted from the application. This however was not the case. The portion of the transcript containing the judges rationale and ruling were in fact attached, as well as the entire lower court record and minute entry. Petitioner's brief made numerous references to the transcript and the testimony therein, giving page and line references. Generally, as a professional courtesy, the appellate Court notifies counsel when a referenced exhibit has been omitted by an obviously inadvertent error, especially when one's civil liberty is at stake, as is the case here.

On May 7, 2004, Petitioner timely filed an application for writs of review, certiorari and mandamus to the Louisiana

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[7] The trial court made clear that "if the interfering with a police officer charge is invalid or unlawful in the first placed [sic], the remaining charges should fall." App. 2.

[8] For each of her convictions Petitioner was ordered to serve fifteen days of a suspended sixty day sentence, pay four hundred and fifty dollars in fines plus court costs and was placed on six months active probation. App. 8-9.

Supreme Court.[9] On February 18, 2005, that application was denied, without written opinion, with two justices[10] willing to grant that writ. Prior to the court's denial, on January 26, 2005, the court requested a written opposition from the State of Louisiana. The State filed a brief opposition on February 9, 2005. Capt. Broussard prepared and timely filed a reply to the State's brief in opposition, however, Petitioner's writ was denied before her reply could be considered.[11]

Petitioner subsequently filed a timely application for rehearing or reconsideration of her application for writs of review, certiorari and mandamus to the Louisiana Supreme Court. Within that application, Petitioner reiterated the erroneous contentions asserted by the State in its written opposition to Capt. Broussard's first request for review. Unfortunately, on April 8, 2005, Petitioner's request was again denied, with the same two justices willing to grant that writ.

Execution of Petitioner's sentence was initially stayed by the trial court pending her applications for writs of review. After the Louisiana Supreme Court denied Capt. Broussard's applications, the trial court again stayed execution of the sentence due to Capt. Broussard's pending deployment to Iraq.

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[9] The Louisiana Supreme Court is the highest court in the State of Louisiana.

[10] Chief Justice Pascal Calogero Jr. and Justice Bernette Johnson would grant the writ.

[11] Capt. Broussard's reply was filed within ten days of the opposition as per Louisiana Uniform Courts of Appeal Rule 2-12.7.

Capt. Broussard prays that this court grant the petition and afford her the right to have her case reheard, or in the alternative, remand her case back to the Louisiana Supreme Court so that the language forming the enforceable portion of J.P. 20-24 can be constitutionally construed.

REASONS FOR GRANTING THE WRIT

Through its arbitrary application, J.P. 20-24 has made Petitioner Capt. Shawn Broussard a convicted criminal due to its conferring upon police the virtually unfettered authority to arrest and charge persons with an infraction.[12] At the discretion of two officers working a private detail,[13] Capt. Broussard was arrested for interference, for her actions, which consisted only of speaking, and took up a mere minute and a half of the officers time. As the facts of this case illustrate, through the application of the ordinance, a

[12] According to Code of Ordinances, Jefferson Parish Louisiana § 1-10, "the violation of any provision of this code shall be punished by a fine not exceeding five hundred dollars ($500.00) or imprisonment for a term not exceeding six (6) months or by both such fine and imprisonment, within the discretion of the court."

[13] *See, Duplantis v. Dillard's*, 849 So.2d 675 (La. App. 1 Cir. 2003) (Terrebonne Parish Sheriff's Office deputy who was performing precisely this activity, detaining a suspected shoplifter while working an off-duty paid detail for a department store, was *not* acting as a law enforcement officer, but was rather acting as an *employee* of Dillard's, performing functions that a non-law enforcement Dillard's employee could perform). *See also, Wright v. Skate Country, Inc.*, 734 So.2d 874 (La. App. 4 Cir. 1999) and *Duryea v. Handy*, 700 So.2d 1123 (La. App. 4 Cir. 1997) (holding that law enforcement officers working paid details are not acting as employees of their respective law enforcement agencies, but rather as employees of the private entity who were paying the officers to work while off-duty).

citizen may be criminally prosecuted for lawfully exercising his right to free speech. In a local municipality whose citizens are currently plagued by the fear of police brutality,[14] the vague language of the ordinance further provides occasion for the abuse of police powers. By denying Capt. Broussard the opportunity to have her case reviewed, the Louisiana Fifth Circuit Court Of Appeals and the Louisiana Supreme Court essentially confirmed the constitutionality of the ordinance. This Court should grant review because that tacit affirmation of the ordinance's constitutionality sharply conflicts with the decisions of this Court in *City of Houston v. Hill,* 482 U.S. 451 (1987), and *Lewis v. City of New Orleans,* 415 U.S. 130, 135 (1974).

While Petitioner appreciates that it should not be necessary for this court to reiterate the principles of *Lewis* or *Hill*, she submits that the *pro tanto* abrogation of *Lewis* and *Hill* effected in Louisiana by the decisions below require this Court's attention to this matter.

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[14] The problems currently associated with the Jefferson Parish Police are numerous. *See, e.g.,* Michelle Hunter, *Lee backs lethal response to chase More than 100 shots left teen driver dead,* New Orleans Times Picayune, June 1, 2005 (2005 WLNR 8752433) (Sheriff's deputies firing over one hundred shots at three suspected teenage car thieves, to which Jefferson Parish Sheriff Harry Lee responded "[i]f it took 300 bullets and they told me they shot 300 times, [it] would have been OK [sic] with me."). Further, *see, also,* Katy Reckdahl, *Target Practices,* Gambit Weekly, Apr. 12, 2005, at cover story (Jefferson Parish Sheriff's accused of using racially inappropriate firing range targets). *See, also,* Bruce Alpert, *Area Police Rank High in U.S. Brutality Report N.O. Leads List; Jefferson Is Third,* New Orleans Times Picayune, May 20, 1992 (1992 WLNR 818768) (in 1991 the Jefferson Parish Sheriff's Office was third in a national survey of police brutality complaints investigated by the Justice Department). Westlaw electronic citations have been substituted in place of pinpoint newspaper pages and are subject to change.

The Jefferson Parish ordinance making it illegal to interfere with law enforcement officers has direct and indirect consequences which are contrary to this Courts previous decisions on virtually the same issue. A careful reading of the trial court opinion reveals it to be nothing more than an attempt to justify the ordinance on its face. Capt. Broussard was arrested and convicted for partaking in constitutionally protected speech – a humiliating and potentially damaging experience for a "mustang"[15] in the United States Army. Moreover, if the mere speaking to an off duty police officer working a private detail in the furtherance of not the state, but a private entity constitutes a crime, such an application of the law will cause material injustices and significantly affect the public interest.

Petitioner submits that the Jefferson Parish ordinance as currently written is not narrowly limited to constitutionally unprotected speech, that the ordinance has not been confined by judicial construction to such speech, and that the ordinance always was and still remains susceptible to unconstitutional applications. It is important to note that no Louisiana appellate court has taken the opportunity to clarify, narrow, limit or in any way interpret J.P. 20-24.

On its face, it is apparent that the Jefferson Parish ordinance fails to meet the standards for validity enunciated by previous decisions of this Court. Defiantly ignoring superior court jurisprudence,[16] the trial court's opinion

[15] The title of "mustang" is given to those who become an officer after having risen from the lowest of enlisted ranks.

[16] It is well settled in Louisiana that municipalities are without authority to enact ordinances which are inconsistent with or in

(Continued on following page)

displays the potential for J.P. 20-24's application to violate one's right to free speech. The trial court refused to apply the definition of "interference" in conformity with state law. In doing so, the trial court determined that "interference" was broader than the jurisprudentially accepted definition. The trial court's interpretation of the statute to mean any communication with the officers is the sole issue before this Court, as that interpretation allows for the future abuse of one's right to free speech.

In consideration of whether a statute is overbroad, the threshold issue to consider is whether the statute reaches a substantial amount of constitutionally protected conduct. *Hoffman Estates v. Flipside*, 455 U.S. 489 (1982). "Criminal statutes must be scrutinized with particular care, those that make unlawful a substantial amount of constitutionally protected conduct may be held facially invalid even if they also have a legitimate application." *City of Houston v. Hill*, 482 U.S. 451 (1987) (internal citations omitted). J.P. 20-24 impinges upon a substantial amount of constitutionally protected conduct, as it violates the right to free speech guaranteed by the First Amendment. Based on the ordinance as it was applied in the present case, merely speaking to officers during their investigation of a potential shoplifter was sufficient to satisfy the finding that the officer's duties were "obstructed" or "interfered with." This Court has expressly denounced the application

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contravention with state law. *Restivo v. City of Shreveport*, 566 So.2d 669 (La. App. 2 Cir. 1990); *State ex rel. Corbello v. Bond*, 441 So.2d 742 (La. 1983); *City of Lake Charles v. Broussard*, 475 So.2d 411 (La. App. 3 Cir. 1985). A municipal ordinance cannot be valid if it forbids what the state legislature has expressly or implicitly authorized. *City of Shreveport v. Curry*, 357 So.2d 1078 (La. 1978).

of laws similar to J.P. 20-24. 482 U.S. 451 (1987), 415 U.S. 130, 135 (1974).

In *City of Houston v. Hill*, this Court held an ordinance virtually identical to J.P. 20-24 be substantially overbroad and invalid. 482 U.S. 451 (1987). Code of Ordinances, City of Houston, Texas, 43-11(a) (1984), read:

> "Sec. 34-11. Assaulting or interfering with policemen.
>
> "(a) It shall be unlawful for any person to assault, strike or in any manner oppose, molest, abuse or interrupt any policeman in the execution of his duty, or any person summoned to aid in making an arrest."

This Court held that the enforceable portion of that ordinance dealt "not with core criminal conduct, but with speech." *Hill* at 411. In further delivering this Court's finding that the Houston ordinance was facially overbroad, Justice Brennan stated verbatim:

> "[C]ontrary to the city's contention, the First Amendment protects a significant amount of verbal criticism and challenge directed at police officers. 'Speech is often provocative and challenging. . . . [But it] is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of serious substantive evil that rises far above public inconvenience, annoyance, or unrest.' *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949)." *Id.* at 461.

Capt. Broussard's alleged actions are strikingly analogous to those of Mr. Hill's, who shouted at police while they were questioning his friend on a Houston

street. As in the present case, the Houston police arrested only Mr. Hill, not the person whom they had stopped, just as the Jefferson Parish deputies arrested Capt. Broussard, and not the "suspected shoplifter" who they had stopped. The Jefferson Parish deputies allege that Capt. Broussard was speaking to their suspect, although Capt. Broussard asserts that she, like Mr. Hill, spoke only to the police,[17] who were questioning a third person.

The Jefferson Parish ordinance shows the same symptoms of overbreadth as the Houston statute. If the "enforceable portion" interpretation supplied by this Court in *Hill* is followed, the Jefferson Parish ordinance must fail, as it too deals with constitutionally protected speech and not with "core criminal conduct." *Id.* at 411.

There are also strong similarities between J.P. 20-24 and the ordinance this Court struck down in *Lewis v. City of New Orleans*, 415 U.S. 130, 135 (1974). That ordinance provided, "[i]t shall be unlawful and a breach of the peace for any person wantonly to curse or revile or to use obscene or opprobrious language toward or with reference to any member of the city police while in the actual performance of his duty." New Orleans Ordinance 828 M.C.S. s 49-7 (1972). Although J.P. 20-24 does not directly make it illegal to use "obscene or opprobrious language," s 49-7, directed to a police officer "while in the actual performance of his duty," it does however make it unlawful for someone to "obstruct or interfere with any law enforcement officer in the performance or discharge of his duties." Code of Ordinances, Jefferson Parish Louisiana § 20-24.

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[17] This portion of Capt. Broussard's testimony was corroborated by an independent witness during her trial.

Similar to the terms at issue in *Lewis,* the terms "obstruct or interfere" enunciated in the Jefferson Parish ordinance lack sufficient specificity to "give persons of reasonable intelligence adequate notice that certain conduct is proscribed and punishable by law, [further,] it does not provide sufficient standards by which guilt or innocence may be determined." *Kolender v. Lawson*, 461 U.S. 352 (1983); *State v. Pierre*, 500 So.2d 382 (La. 1987). The definition of "obstruct" is that of La. R.S. 14:108, which is the clearest part of the statute, prohibiting specific acts, mostly on the part of arrested persons.[18] "Interfere" is defined by J.P. 20-23,[19] in pertinent part as "in addition to its common meaning[20] . . . mean (a) [t]he intentional hindering, infringing, intermeddling, obstructing, delaying, hampering or impeding the progress of." None of these terms are defined by any Jefferson Parish Ordinance whatsoever. For instance, how much of a "delay" constitutes "delaying?" Exactly what speech

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[18] The definition of "obstruct" found in La. R.S. 14:108 does not apply in the present matter, as it defines "obstruct" to include, in addition to its common meaning, flight from officers attempting to arrest, violence toward officers while arresting, refusal to give identity when arrested, or congregation with others and refusal to move on when directed. There was no evidence presented that Capt. Broussard was engaging in any of these activities, and while she may have failed to move on, she was alone and was by no means "congregating with others." La. R. S. 14:108 is reproduced in its entirety on page 14 of the Appendix.

[19] J.P. 20-23 is reproduced in its entirety on pages 15-16 of the Appendix.

[20] Webster's Collegiate Dictionary provides two pertinent definition of "interfere." 1.) "to interpose in a way that hinders or impedes: come into collusion or be in opposition." 2.) "to enter into or take part in the concerns of others." *Merriam-Webster's Collegiate Dictionary, Eleventh ed.*, 652 (Merriam-Webster Inc. 2004).

"hinders, impedes or obstructs" an officer? One would like to believe that a Captain in the United States Army qualifies as a person "of reasonable intelligence" capable of determining whether or not her conduct is interfering with a police investigation, however, the adverse seems to be the case. The open-ended wording of J.P. 20-24 allowing such a myriad of interpretations truly shows the Achilles Heel of the ordinance; no matter which version of the story one chooses to accept, Capt. Broussard's speech was, and still remains constitutionally protected under the First Amendment.

The definition of "interfere" as provided by J.P. 20-23 and Louisiana jurisprudence was apparently not sufficient for the trail court.[21] Noting that the content of Capt. Broussard's speech was irrelevant, the trial court stated "[r]egardless of what Ms. Broussard was in fact informing the suspect of or what she was in fact discussing with the officers, she apparently was not complying with the officers instructions and as such I believe that can constitute an interference or obstruction of the officer's performance or discharge of their duties . . . " App. 4-5. The trial courts creation of a *per se* standard of "interference" leaves the field wide open for arbitrary and discriminatory

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[21] *See, Melancon v. Trahan*, 645 So.2d 722 (La. App. 3 Cir. 1994) (held – an arrest for refusing a police order to move on was not lawful under statute prohibiting conduct which obstructs officers acting in their official capacity while attempting to seize property, serve lawful process, or make lawful arrest). *See also, Brumfield v. Jones*, 849 F.2d 152 (La. 5 Cir. 1988) (holding that interference with investigation alone does not constitute interference with an officer in course of arrest). *See also, State v. Green*, 706 So.2d 536, 538 (La. App. 5 Cir. 1997) *and, State v. Lindsay*, 388 So.2d 781, 783 (La. 1980) (held – interference with an officer's investigation is *not* sufficient to constitute interference with a law enforcement officer under La. R.S. 14:108).

enforcement, as it "confers on police a virtually unrestrained power to arrest and charge persons with a violation." *Lewis* at 466-467.

The definition of "interfere" as construed by the trial court further conflicts with *Hill* and *Lewis* in that it does not proscribe only "fighting words." 482 U.S. 451 (1987), 415 U.S. 130, 135 (1974). The parties testimony is further in conflict as to the nature and content of the remarks which led to Capt. Broussard's arrest. According to Capt. Broussard, she was attempting to speak to the deputies relevant to what she had observed, while the deputies claim she was attempting to advise the suspect of his rights. Further, the deputies claim that Capt. Broussard was speaking in a loud tone, a position disputed by Capt. Broussard and an independent witness during her trial

Although not all speech is constitutionally protected, words which are not "fighting words," are constitutionally protected free speech. *City of New Orleans v. Lyons*, 342 So.2d 196 (La. 1977), *State v. Miller*, 703 So.2d 125 (La. App. 4 Cir. 1997). Additionally, words "which by their very utterance may cause alarm, public disruption, or constitute a signal to prompt unlawful action" are not protected speech. *State ex rel. R.T.*, 781 So.2d 1239 (La. 2001). As several courts have held that using profanity in a loud tone of voice is protected speech, merely speaking in a loud tone, without the use of profanity or alarming words, must also be free speech. *Lewis v. City of New Orleans*, 415 U.S. 130 (1974); *State v. Miller*, 703 So.2d 125 (La. App. 4 Cir. 1997); *State v. McCoy*, 546 So.2d 240 (La. App. 2 Cir. 1989).

The one substantive issue not contested by either party is that at no point did Capt. Broussard use any

language that could be construed as "fighting words" or intended to cause alarm or incite an immediate breach of the peace. Moreover, there was no testimony that she used any language that could be construed as intended to provoke or incite lawless activities on the part of the public. In Justice Powell's concurring opinions in *Lewis,* he stated that "a properly trained officer may reasonably be expected to 'exercise a higher degree of restraint' than the average citizen . . . " 415 U.S. 130, 135 (1974), 408 U.S. 913, 92 S.Ct. 2499. Similarly, it is not unreasonable to expect that a properly trained deputy withhold from arresting someone for speaking to him without the use of "fighting words" while he is "investigating" a suspected shoplifter.

One major crux of both the Houston and New Orleans ordinances was that they were not specifically narrow enough to prohibit "fighting words." As it is currently interpreted, the Jefferson Parish ordinance suffers from the same quandary, as "[i]t is not limited to fighting words nor even to obscene or opprobrious language, but prohibits speech that 'in any manner . . . interrupt[s]' an officer." *City of Houston v. Hill,* 482 U.S. 451, 462 (1987). Although there is no testimony that Capt. Broussard violated this portion of the statute by uttering any statement that could be construed as "cursing, reviling or . . . opprobrious language," others could and have faced charges under this statute for uttering speech which is constitutionally protected in the presence of law enforcement.

As it is currently interpreted and applied, the Jefferson Parish ordinance severely encumbers upon a persons right to free speech as provided by the First Amendment. There is a grave need for this Court to intervene; if the ordinance is allowed to remain in force as it is presently

interpreted, law abiding citizens stand the chance of being prosecuted for exercising their constitutional right to free speech. In the words of Justice Brennan, "The Constitution does not allow such speech to be made a crime. The freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state." *Id.* at 462-463.

CONCLUSION

For the reasons set forth above, the petition for writ of certiorari should be granted. Alternatively, Petitioner requests that this Court remand this matter to the Louisiana Supreme Court so that the ordinance may be authoritatively construed so that it is not susceptible of application to speech that is protected by the First and Fourteenth Amendments.

Respectfully submitted,

D. DOUGLAS HOWARD, JR.
Counsel of Record
SHAWN C. REED
DANYELLE M. TAYLOR
HOWARD REED & TAYLOR
839 St. Charles Avenue
Suite 306
New Orleans, LA 70130
(504) 581-3610

Counsel for Petitioner

SECOND PARISH COURT
PARISH OF JEFFERSON
STATE OF LOUISIANA

STATE OF LOUISIANA NUMBER S876426
VERSUS
SHAWN BROUSSARD DIVISION "B"

Proceedings taken in the above numbered and entitled cause in open court on November 13, 2003 before the Honorable Stephen C. Grefer, Judge presiding.

* * *

APPEARANCES:

Assistant District Attorney

LOREN C. MCGHEE
ROGER W. JORDAN

Attorney For Defendant

D. DOUGLAS HOWARD, JR.
DANYELLE M. TAYLOR

* * *

[267] THE COURT: Back on the record on case No. 876426, "State of Louisiana vs Shawn Broussard."

At this time, the Court having heard the evidence submitted at trial including the testimony of the witnesses and reviewed the videotape, which was submitted into evidence in this matter. Submitted as both State's Exhibit 1 as well as Defense Exhibit 1, the Court makes the following findings.

First of all with respect to the interfering charge, which in some respects hold the key to the remaining charges in this matter, if defense counsel's argument is correct in that if the interfering with a police officer charge is invalid or unlawful in the first placed [sic], the remaining charges should fall. The Court considers that a threshold charge in this matter. If that is not the case, of course, that is just one of three charges on the bill of information and as such, it should be treated as the others. However, getting to that may be of some substantive issue on appeal, should there be one.

[268] The Court finds as follows with regard to the interfering with an officer charge. First of all, we are dealing with Jefferson Parish Ordinance 20:24 as opposed to Revised Statute 14:108. Jefferson Parish Statute 20:24 specifically states in paragraph A that, "it shall be unlawful for any person to obstruct or interfere with any law enforcement officer in the performance or discharge of his duties." That is a broader statute than that contained in 14:108 and as such those words in that statute are to be given their normal and habitual use absent some specific definition to the contrary.

The word obstruct is further defined in paragraph B to include for the purposes of this section, "obstruct shall also include any acts or actions which constitute an obstruction of an officer's duties as defined in 14:108." As previously discussed in the defendant's motion to dismiss or a motion for judgment of acquittal, 14:108 specifically includes that the officer must be involved in an arrest or seizure in order for the issue of obstruction to be a valid one.

In that regard, the Court was cited several cases which it read or was familiar with at the time of making its ruling with regard to the motion to dismiss or the motion for judgment of acquittal and has subsequently reread those cases to confirm the Court's opinion that the obstruction [269] charge as defined in 108 is in fact, an additional definition as stated in the paragraph B it says, "shall also include any acts under 14:108." It is not limited to those acts under 14:108. In addition, paragraph A under subsection 20:24 includes "obstruct or interfere with any law enforcement officer in the performance or discharge of his duties."

That being the case, the question is whether these two officers, Officer Kowalski and Officer Picou were in fact involved in the performance and discharge of their duties at the time. Defense counsel has argued that they were not. In fact, that they were employees of Dillard's. However, whether they were on a private detail or whether they were in fact on duty, they were still performing and discharging the duties of a police officer in the investigation of a shoplifting charge as reported to them by the loss prevention officer of Dillard's at the time this incident took place.

The Court does find that these two officers in uniform on the night in question were in the performance and discharge of their duties in the investigation of a shoplifting charge.

The question then becomes is whether or not the defendant in this matter, Ms. Broussard, actually interfered or obstructed that investigation or the performance of [270] those duties. The Court has the great benefit in this matter of the video, which has been reviewed on a

number of occasions throughout this trial and does not have to rely solely on the testimony on the parties in this case.

Having viewed the video and the testimony of the witnesses, the Court finds that the video is more consistent with the testimony of the officers in this matter in that Ms. Broussard did in fact, interject or interpose herself into the investigation being conducted by officers. According to the video, it was in fact, Ms. Broussard who approached Officer Kowalski initially, subsequently retreating from the situation and then again, returning to interpose or interject herself into that investigation again. It appears from the video that Officer Kowalski on a number of occasions instructed Ms. Broussard to leave the area or to vacate the premises by the direction he was pointing over Ms. Broussard's shoulder. The Court noted on three different occasions that Officer Kowalski appeared to be instructing Ms. Broussard to leave. Ms. Broussard did not withdraw or retreat from the situation after her initial time in doing so. In fact did not leave the premises after the initial instruction apparently by the officer to do so.

Officer Kowalski did testify that he [271] instructed Ms. Broussard to remove herself from the situation on a number of occasions. Ms. Broussard, I believe continued to interject herself into that situation. The testimony from the officers is that Ms. Broussard was informing the defendant of his right not to be arrested by the officers or his right not to cooperate with the officers. Regardless of what Ms. Broussard was in fact informing the suspect of or what she was in fact discussing with the officers, she apparently was not complying with the officers instructions and as such I believe that can constitute an interference or obstruction of

the officer's performance and discharge of their duties in the investigation of that shoplifting charge.

Accordingly, the Court would find Ms. Broussard guilty of the interfering with the police officer charge as charged under Jefferson Parish Ordinance 20:24.

With respect to the battery on police officer charge, Ms. Broussard testified that she did in fact, knee Officer Kowalski and in fact, did kick Officer Kowalski. Whether that be one consistent motion or two separate motions, she did strike Officer Kowalski on two different occasions. She however testified that that was in response to Officer Kowalski placing her up against the wall with his forearm in her throat and she was simply defending herself in that she was [272] finding it difficult to breathe at the time.

It would seem inconsistent with Ms. Broussard's testimony that Officer Kowalski suddenly and apparently for no reason, according to her was able to or had reason to put her up against the wall with his arm in her throat short of her resisting in some fashion or causing some sort of problem. Mr. Jacobs did testify that as they approached or as they entered into the holding room, as it were, that he did hear Ms. Broussard speaking loudly and screaming and causing an obstruction and it was at that time that he heard Officer Kowalski or saw Officer Kowalski doubled over in pain from what apparently was a kick or knee to the groin. He then did testify affirmatively that he saw Ms. Broussard kick Officer Kowalski for a second time or the first time that he saw, but a second time apparently according to Officer Kowalski and as such those acts would constitute a battery on a police officer. In fact that she did strike Officer Kowalski in violation of Section 34 – Title 14, Section 34.2, which defines a battery on a police officer

as, "a battery on a police officer is a battery committed without the consent of the victim when the offender has reasonable grounds to believe the victim is a police officer acting in the performance of his duty."

I don't believe there's any question [273] that at the point Ms. Broussard struck Officer Kowalski she knew he was in fact, a police officer. He was in uniform and certainly he was in the performance of his duty at that time as he had previously arrested Ms. Broussard.

Which leaves us only with the resisting accordingly and the Court would find that the State has proved its case beyond reasonable doubt with respect to the battery charge and finds Ms. Broussard guilty of that charge as well.

With respect to the resisting an officer charge, the Court is of the opinion that it cannot use the basis of the kicking and the kneeing of Officer Kowalski as a basis for finding that Ms. Broussard did, in fact, resist arrest. The Court is not of the opinion that the same sets of facts and circumstances can give rise to two separate convictions. As such, the Court would have to find a separate incident which would constitute a resisting an officer charge. According to the video, it seems that Ms. Broussard was fairly cooperative at the time she was arrested. There is a slight jerking of her arms initially, but I don't think that can be constituted a separate offense for resisting an officer.

Officer Kowalski and Officer Picou tend to point to a separate part of the video as Ms. Broussard is being led away as being a [274] separate incident of resisting in which she is jerking away from the officer. The Court cannot verify or say that it actually saw that on the video.

Either the video was too dark or it is not apparent from the video.

Officer Kowalski did testify that Ms. Broussard subsequently did resist into the holding room, that testimony is unsupported either by Mr. Jacobs and is certainly contradicted by Ms. Broussard. On that particular issue of resisting an officer, I don't think the testimony is supported by the video evidence and there is a direct contradiction between Ms. Broussard and the officer on that particular issue. The Court is just not convinced beyond reasonable doubt that there was a separate incident of resisting an officer. Certainly if the defendant was not charged with battery on a police officer, the kneeing and kicking would constitute a resisting charge, but again, I don't believe I can find her guilty on both of those charges for the same sets of facts and circumstances. So, as such, the Court finds the defendant not guilty with respect to the resisting an officer charge.

As such, Ms. Broussard, if you would, please stand up, ma'am. The Court having found you previously guilty of battery on a police officer and obstruction or interference with a police – interfering with a law enforcement officer under [275] Jefferson Parish Ordinance 20:24, the most serious of those two charges, ma'am is battery on a police officer and under subsection B, which gives the sentencing provisions it states, "that whoever commits the crime of battery on a police officer shall be fined not more than $500 and imprisoned for not less than 15 days nor more than six months without the benefit of parole, probation or suspension of sentence."

The Court being aware that whatever sentence it gives you in this matter must be imposed without the

benefit of parole, probation or suspension of sentence. The Court also being aware that there is a civil litigation pending in this case and Court being convinced that Mr. Howard and co-counsel certainly will intend to seek an appeal in this matter, I'm going to impose sentence at this time, but defer execution of that sentence until such time as the appeal of this matter has been resolved.

MR. HOWARD: Thank you, Your Honor, for your verdict. Let me suggest to you – thank you for not imposing the sentence until after, but I don't have an appeal from you I have – I take a writ.

THE COURT: A writ or review, correct.

MR. HOWARD: So, I will have all of that for you [276] tomorrow if you don't mind?

THE COURT: That is not a problem. Ms. Broussard, at this time, again, as I said I'm going to impose, but not – but defer execution.

Okay. At this time with respect to the battery on the police officer charge, ma'am, I'm going to sentence you to 60 days parish prison. I'm going to suspend all but 15 days of that sentence and sentence you to pay a $350 fine plus court costs.

With respect to the interfering with a police officer charge, I'm going to again sentence you to 60 days parish prison, defer all but 15 days of that sentence to run concurrent with the time on the battery on a police officer and impose a sentence of $100 fine plus court costs.

So your sentence is 15 days in parish – 60 days in parish prison. I'm going to defer all but 15 days, place you on one year, I'm going to make that six months active

probation. Again, however, I'm going to depose the execution of that sentence until such time as you resolve any issues with regard to the appeal, assuming that you are going to take a writ of review, not appeal.

MR. HOWARD: Thank you, Your Honor.

THE COURT: If you don't file a timely writ of review, then the sentence will become [277] executory immediately.

MR. HOWARD: Right. Thank you.

THE COURT: Thank you. Thank you, Counselors, for your trying of this matter and your cooperation and patience with the Court.

Place the proffers into evidence. The Court will accept those as proffers in this particular matter, those being previously excluded from evidence.

(WHEREUPON THE PROCEEDINGS CONCLUDED)

Application For Writs

No. '04-KH-174

COURT OF APPEAL, FIFTH CIRCUIT

STATE OF LOUISIANA

FEB. 18, 2004

Glyn Rae Waguespack

Deputy Clerk

STATE OF LOUISIANA
VERSUS
SHAWN BROUSSARD

IN RE SHAWN BROUSSARD

APPLYING FOR SUPERVISORY WRIT OF REVIEW FROM SECOND PARISH COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, NUMBER 876-426, DIRECTED TO THE HONORABLE STEPHEN C. GREFER, JUDGE DIVISION "B".

Attorneys for Relator:

D. Douglas Howard, Jr.
Danyelle M. Taylor
Attorneys at Law
839 Saint Charles Ave
Suite 306
New Orleans, LA 70130
(504) 581-3610

Attorneys for Respondent:

Terry M. Boudreaux
Assistant District Attorney
100 Derbigny Street
Gretna, LA 70053
(504) 368-1020

WRIT REFUSED

The writ application is not in compliance with our uniform rules. Uniform Rules – Courts of Appeal 4-5 requires relator to include a copy of the ruling complained of in the writ application. Rule 4-5(h) requires her to provide a copy of each pleading on which the judgment, order or ruling was founded. There is no showing that the constitutional issue was ever presented in the trial court.

In addition, relator challenges the sufficiency of the evidence to support the convictions, but presents nothing for this court to review, as she does not include the trial transcript.

Rule 4-1 provides that an application shall not be considered unless it is properly filed with the clerk. On the showing made, we decline to exercise our supervisory jurisdiction.

GRETNA, LOUISIANA,
this 7th day of April, 2004.

/s/ [Illegible]
JUDGE MARION F. EDWARDS

/s/ T.D.
JUDGE THOMAS F. DALEY

/s/ SMC
JUDGE SUSAN M. CHEHARDY

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

VS. NO. 2004-K-1143

SHAWN BROUSSARD

IN RE: Broussard, Shawn; – Defendant; Applying for Supervisory and/or Remedial Writs, Parish of Jefferson, Second Parish Court for the Parish of Jefferson, No. 876-426; to the Court of Appeal, Fifth Circuit, No. 04-KH-174

February 18, 2005

Denied.

CDK

JPV

CDT

JTK

JLW

CALOGERO, C.J., would grant the writ.
JOHNSON, J., would grant the writ.

Supreme Court of Louisiana
February 18, 2005

/s/ Katherine A. Fontana
Deputy Clerk of Court
For the Court

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

VS. NO. 2004-K-1143

SHAWN BROUSSARD

IN RE: Broussard, Shawn; – Defendant; Applying for Reconsideration of this Court's Order dated February 18, 2005; Parish of Jefferson, 2nd Parish Court Div. B, Nos. 876-426; to the Court of Appeal, Fifth Circuit, No. 04-KH-174

April 8, 2005

Application for reconsideration denied.

CDK

CDT

JPV

JTK

JLW

CALOGERO, Chief Justice, would grant.
JOHNSON, J., would grant.

Supreme Court of Louisiana

/s/ Katherine K. Fontana
Deputy Clerk of Court
For the Court

La. R.S. 14:108. Resisting an officer

A. Resisting an officer is the intentional interference with, opposition or resistance to, or obstruction of an individual acting in his official capacity and authorized by law to make a lawful arrest or seizure of property or to serve any lawful process or court order when the offender knows or has reason to know that the person arresting, seizing property, or serving process is acting in his official capacity.

B. (1) The phrase "obstruction of" as used herein shall, in addition to its common meaning, signification, and connotation mean the following:

(a) Flight by one sought to be arrested before the arresting officer can restrain him and after notice is given that he is under arrest.

(b) Any violence toward or any resistance or opposition to the arresting officer after the arrested party is actually placed under arrest and before he is incarcerated in jail.

(c) Refusal by the arrested party to give his name and make his identity known to the arresting officer or providing false information regarding the identity of the arrested party to the arresting officer.

(d) Congregation with others on a public street and refusal to move on when ordered by the officer.

(2) The word "officer" as used herein means any peace officer, as defined in R.S. 40:2402, and includes deputy sheriffs, municipal police officers, probation and parole officers, city marshals and deputies, and wildlife enforcement agents.

C. Whoever commits the crime of resisting an officer shall be fined not more than five hundred dollars or be imprisoned for not more than six months, or both.

Jefferson Parish Ordinances

Sec. 20-23. Definitions.

For the purposes of this article, the following terms, phrases, words and derivations shall have the meaning given herein, unless it shall be apparent from the context that a different meaning is intended:

(1) *Code enforcement officer* shall mean any employee of the Parish of Jefferson or any of its districts, agencies and/or departments who is authorized to make inspections, issue violation notices or summons and/or otherwise authorized to enforce the ordinances of Jefferson Parish. The term "code enforcement officer" shall include, but not be limited to: inspectors of the department of inspection and code enforcement, animal control officers of the Jefferson Parish Animal Shelter, inspectors of the department of environmental affairs, inspectors of the department of fire and emergency services and any empowered officer or deputy of the Jefferson Parish Sheriff's Office.

(2) *Fire fighter* shall include fire fighters employed by the department of fire and emergency services or any authorized member of a volunteer fire company.

(3) *Interfere with*. The phrase "interfere with," as used herein, shall, in addition to its common meaning, signification and connotation, mean:

a. The intentional hindering, infringing, intermeddling, obstructing, delaying, hampering or impeding the progress of.

b. The intentional cursing, reviling or using of any opprobrious language.

(4) *Law enforcement officer* shall include: The sheriff of the Parish of Jefferson or any deputy sheriff; any federal, state or municipal law enforcement officer duly empowered with police authority; and any other law enforcement officer authorized to perform official duties in the unincorporated areas of the Parish of Jefferson.

Sec. 20-24. Interfering with law enforcement officers.

(a) It shall be unlawful for any person to obstruct or interfere with any law enforcement officer in the performance or discharge of his duties.

(b) "Obstruct," for the purposes of this section, shall also include any acts or actions which constitute an "obstruction of" an officer's duties as defined in R.S. 14:108.